

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
31 HOPKINS PLAZA  
BALTIMORE, MD 21201

DEPARTMENT OF THE TREASURY

Person to Contact:

Telephone Number:

Reply to: BP/EO:T

Date:

SEP 21 1995

CERTIFIED MAIL:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated [REDACTED] as a non-profit organization under the laws of the [REDACTED]. Your articles of incorporation state that "The purposes for which the corporation is organized are exclusively for charitable, religious, educational and scientific purposes including:

- a) To conduct and carry on a Nation of Islam power products distribution in [REDACTED] metropolitan area.
- b) Conduct services; Fundraising, donate funds to invest, trade and deal in any personal property; raise funds for HIV/AIDS treatment and youth businesses and national tours.
- c) And to carry on general activities, to purchase, sell or barter in all classes of goods and articles or trade, to advise, assist, promote or supervise services of every kind and description with relations to planning and conducting entertainment exhibitions; video and photograph, lamination, promotions and productions, all types under African Culture.
- d) Security for the Community and Special Events.

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	97245		EP/EO:T				
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	9-17-95	9/18/95	9/20/95				

This document further states at Article Fifth that "Provisions for the regulation of the internal affairs of the corporation, including the provision for distributions of assets on dissolution or final liquidation shall be provided in the bylaws in accordance with the non-profit corporation act. A review of the by-laws submitted with your application indicates that no provision has been made in this document to provide for the distribution of assets in the event your corporation dissolves. In addition, there is no provision in your articles of incorporation to distribute your assets in the event you dissolve.

The projected activities of your organization, as described in your application and a brochure submitted with your application indicates that your primary purpose is to help the youth of the African American communities. Your proposed programs, as described in your application, include:

1. Conducting HIV/AIDS awareness conferences.
2. Youth motivator speaking conference
3. Jobs and counseling workshops
4. Training programs to achieve basic skills
5. Community involvement in solving crime and violence.

The brochure submitted with your application states in part that "This organization was founded on the promise to be an economic outlet base to help small Black businesses and Positive organizations and suffering families in our community." This brochure further states that "All funds and contributions will go towards youth, entrepreneurship, education, HIV/AIDS Research, Jobs for Youth, Economic Development, Loans for businesses and funds for HIV/ADS patients going into treatment."

The brochure describing your proposed activities also indicates that you expect to provide free transportation for senior citizens and youth to shop and take care of other business. This brochure also states that [redacted] is a charitable organization and that "all contributions are tax deductible."

This brochure also indicates that "We provide Notary Publics that will travel anywhere in the [redacted] at your request."

The financial statements submitted with your application indicated that [redacted] received no income in [redacted]. Projected budgets for [redacted] and [redacted] show anticipated income of \$[redacted] annually. Of this amount, \$[redacted] will be paid to the founders of [redacted], \$[redacted] for fundraising expenses, \$[redacted] for occupancy and rent and \$[redacted] for depreciation. No expenses have been proposed or budgeted to carry out any of the activities described in the application.

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The officers of [redacted] include [redacted], President and CEO and [redacted], Vice President. [redacted] has indicated via telephone that [redacted] is not operational since it is awaiting approval of tax exempt status from the Internal Revenue Service.

On [redacted], we sent you letter asking that you explain many of your activities in greater detail. We also advised you in this letter that under the guidelines of Section 5 of Revenue Procedure 90-27, "exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements under which exemption is claimed. This revenue procedure further states that "The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts and the nature of contemplated expenditures." To date, no additional written explanations have been submitted to us regarding your proposed activities. In a telephone conversation with us, you indicated that all information concerning your organization are contained in the brochure submitted with your application.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable, religious, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a state or local government for a public purpose.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes described in this section. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for an exempt purpose unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes or to the federal government, or to a State or local government for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(i) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

Organizations that are organized on a nonprofit basis do not always qualify for exemption under section 501(c)(3). The fact that an organization does not make a profit is not the controlling factor. See Baltimore Health and Welfare Fund v. Commissioner, 69 T.C. 854, (1978); and B.S.W. Group Inc. v. Commissioner, 352. (1978).

In Better Business Bureau v. United States, 326 U.S. 279-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes.

To qualify for exemption under section 501(c)(3), the applicant organization must show that (1) it is organized and operated exclusively for religious, charitable or other stated purposes, (2) that no part of the net earnings of the organization inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318, F. 2nd, 632 (7th Cir. 1963).

In Calvin K. of Oaknoll v. Commissioner, 69 USTC, 772 (1978), the court held that an organization seeking tax exempt status under section 501(c)(3) whose articles of incorporation contained no provision for the distribution of its assets to qualified organizations upon dissolution did not qualify for exemption under section 501(c)(3).

In LaVerdad v. Commissioner, 82 USTC, 215-221, an organization that had not begun operations and did not intend to start its activities prior to obtaining tax exempt status was denied exemption by the court. The court stated that "it is acknowledged that an organization may seek tax-exempt status prior to beginning operations. However, the organization must describe proposed operations in sufficient detail to permit the conclusion that the organization will meet the necessary requirements for exemption. As the Tax Court held in Church in Boston, 71 T.C. 102, without adequate information to determine whether an exempt purpose is being served, denial of exemption is warranted.

In Ralph H. Eaton Foundation v. Commissioner, 55-1, USTC, 248, the court ruled that an organization formed for the purpose of promoting charitable purposes was not entitled to exemption from federal income tax under 1939 Code Section 101(6), now 1986 Code Section 501(c)(3), since the organization engaged in various commercial pursuits such as selling sports clothing and operating a construction business. The court stated that the organization was organized and operated for two purposes (1) to engage in a commercial business for profit (2) to turn over the profits realized from those commercial activities to charitable organizations. The court held that "the second purpose is charitable; the first purpose clearly is not. To qualify for exemption under section 501(c)(3), the corporation must be organized and operated exclusively for charitable, religious, and other stated purposes."

Our review of the information submitted indicates that your articles of incorporation do not meet the organizational test required for exemption under section 501(c)(3). While you state that your organization is operated exclusively for charitable and other stated purposes, your articles indicate that your organization expects to conduct and carry on a Nation of Islam power products distribution in the [redacted] metropolitan area, conduct fundraising, donate funds to invest, trade and deal in any personal property and raise funds for HIV/AIDS treatment, youth business and national tours."

These articles further state that your organization expects to purchase, sell or barter in all classes of goods and articles of trade, conduct entertainment exhibitions, video and photographs, all dealing with African Culture and provide security for the Community and Special events. While some of these activities may serve charitable purposes, the majority of your proposed activities do not meet the organized exclusively for charitable purposes requirement needed for exemption under section 501(c)(3). A substantial number of these activities such as conducting entertainment exhibitions and providing security for the community are normally conducted by commercial firms and are not charitable. In addition, your articles of incorporation, like the organization described in Calvin K. of Oakknoll, contains no provision for the distribution of your assets to qualified organizations in the event your organization dissolves.

Your description of your proposed activities, like the organization described in LaVordad v. Commissioner, fails to provide sufficient details regarding your proposed operations to permit a conclusion that your organization will be operated exclusively for an exempt purpose. The proposed financial data submitted with your application shows no funds being proposed or budgeted to fund any of the programs you expect to operate.

You have also indicated in your brochure that one of your activities will be to "provide Notary Publics that will travel anywhere in the [redacted] at your request." Providing Notary Public service is an activity that is normally conducted by a commercial, profit making business. This is not an activity normally engaged in by an exempt charitable organization. The fact that you intend to engage in this activity indicates that your organization is operated for a substantial non-exempt commercial purpose which destroys exemption under section 501(c)(3). As the court concluded in Better Business Bureau v. Commissioner, "the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes."

You further state in your brochure that "[redacted] is a charitable organization, contributions to which are tax deductible." This statement is erroneous since no letter granting tax exempt status with contribution deductibility has been issued to [redacted] by the Internal Revenue Service.

Based on the information submitted, we have concluded that you are neither organized or operated exclusively for an exempt purpose under section 501(c)(3). In addition, you have not established that your organization serves exclusively public rather than private interests. You have also not demonstrated that no part of the net earnings of your organization will benefit your founders and creators. Therefore, we have determined that you are not entitled to exemption under section 501(c)(3) and are a taxable entity. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

  
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Contributions to your organization are not deductible to donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials. If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director or Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892.

Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a Power of Attorney or tax information authorization with us.

If you don't appeal this determination within 90 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies.

Section 7428(b)(2) of the Code provides in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

  
District Director

Enclosure:  
Publication 892